

DOCKET REPORT

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)
ALEE CELLULAR COMMUNICATIONS)
For Authorization To Construct)
Nonwireless Cellular System)
in Texas RSA 21 Market 572A)

WT DOCKET No.: [REDACTED]
File No.: 11025-CL-P672-A-89

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of:)	WT DOCKET NO.: 02-28
)	
ALEE CELLULAR COMMUNICATIONS)	File No.: 11025-CL-
)	P-672-A-89
For Authorization To Construct)	
Nonwireless Cellular System)	
in Texas RSA 21 Market 672A)	

Courtroom TW-363
Federal Communications
Commission
445 12th Street, S.W.
Washington, D.C. 20554

Tuesday,
October 22, 2002

The parties met, pursuant to the notice of the
Judge or Commission, at 9:30 a.m.

BEFORE: HONORABLE ARTHUR I. STEINBERG
Administrative Law Judge

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
George G. Malanga	32	51	98	99	34
		90			
Vincent Di Costanzo	103	115	178	--	104
		156			
Terry Jones	180	198	--	--	181
Examination by Judge:	42, 47, 65, 82, 86, 111, 120, 123, 130, 143, 153, 162, 164, 165, 173, 200, 204,				

Hearing Began: 9:30 a.m.
 Recess Began: 1:00 p.m.

Hearing Ended: 4:04 p.m.
 Recess Ended: 2:10 p.m.

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Alee:</u>			
4	33	51	--
5	103	114	--
1	179	196	--
<u>Enforcement Bureau:</u>			
17	63	--	--
16	64	--	--
26	214	(Withdrawn)	--
26	217	219	--

P R O C E E D I N G S

(9:30 a.m.)

JUDGE STEINBERG: We are on the record now. This is the commencement of the hearing in **WT** Docket No. 02-28 involving the application of Alee Cellular Communications for authorization to construct a nonwireless cellular system in Texas RSA 21, March 672A.

The Commission designated this case for hearing by Memorandum, Opinion and Order, Hearing Designation Order and Notice of Opportunity for Hearing, FCC-02-36, released February 22, 2002.

The issues were specified to determine based on previously adjudicated lack of candor on the part of Alee, whether Alee **is** qualified to be a licensee of the Texas system, and whether Alee's application should be granted.

Let me first take the appearances. For Alee Cellular Communications?

MR. HILL: David Hill, Audrey Rasmussen.

JUDGE STEINBERG: For Miller Communications, Incorporated and Ranger Cellular?

MR. EVANS: Donald Evans and Raymond Quianzon.

JUDGE STEINBERG: For the Chief, Enforcement Bureau, Federal Communications Commission?

MS. LANCASTER: Judy Lancaster and Gilberto De Jesus.

1 JUDGE STEINBERG: Okay. Any preliminary matters
2 that we have to talk about before we get to the witnesses?

3 MR. EVANS: One thing. I just wanted to ask what
4 your schedule is planned to be?

5 JUDGE STEINBERG: Well, I figure we can take a
6 break in about 10 minutes, and then, you know, we'll break
7 every 10 minutes. Okay?

8 (Laughter)

9 JUDGE STEINBERG: We will go till noon, take an
10 hour for lunch, and come back and go till four.

11 MR. EVANS: Till four?

12 JUDGE STEINBERG: Yes. If it's a question of
13 finishing somebody and getting them the heck out of here, I
14 know how excited the witnesses must be to be in Washington
15 at this particular time, you know, then we will see if it's
16 not going to take too much longer, we will stay and get rid
17 of the witness. But if it's going to take a considerable
18 period of time, then we will just quit at four. At four
19 o'clock people get testy and mad at each other, and I would
20 rather not deal with that.

21 You look like you have something on your mind

22 MR. EVANS: One other preliminary matter, and
23 that's since a number **of** the witnesses are going to be
24 testifying about the same matters, I wanted to ask if you
25 could direct that the witnesses be sequestered or directed

1 not to discuss their testimony with each other.

2 JUDGE STEINBERG: Okay, that's so ordered.

3 MR. HILL: Your Honor, with one exception.

4 JUDGE STEINBERG: Sure.

5 MR. HILL: I would like to have one representative
6 from the partnership here.

7 JUDGE STEINBERG: Okay, have that representative
8 testify first.

9 MR. HILL: All right, we will.

10 JUDGE STEINBERG: Then that way that problem is
11 solved.

12 MR. HILL: Yes. All right.

13 JUDGE STEINBERG: And, you know, I would have
14 ordered it on my own if nobody had suggested it. I don't
15 think witnesses should hear what the other witnesses have to
16 say. And the witnesses are instructed not to discuss their
17 testimony with any other witness until the record is closed,
18 and Mr. Hill or Ms. Rasmussen will let you know when you can
19 do that.

20 MR. HILL: Your Honor, let me share with the group
21 then my planned order of witnesses.. I am going to call Mr.
22 Malanga, Mr. Di Costanzo, then Terry Jones, Mr. Bernstein,
23 and Becky Jo Clark. That's the planned order barring
24 unforeseen circumstances.

25 MS. LANCASTER: Your Honor.

1 MR. HILL: Monumental traffic or --

2 MS. LANCASTER: I'm sorry. I didn't mean to
3 interrupt.

4 My understanding is you wanted to keep Ms. Clark
5 in the --

6 MR. HILL: I did.

7 MS. LANCASTER: -- hearing room. So my
8 understanding of the Judge's decision just a moment ago that
9 she has to testify first.

10 MR. HILL: Well, that is if I want to keep her
11 here.

12 MS. LANCASTER: Right.

13 MR. HILL: I understood that.

14 MS. LANCASTER: Yes.

15 MR. HILL: Yes.

16 JUDGE STEINBERG: Okay, anything else preliminary?

17 MR. HILL: Nothing from our side.

18 JUDGE STEINBERG: Okay, then, Mr. Malanga is going
19 to be the first witness?

20 MR. HILL: Just a procedure matter. Can we get
21 these people to --

22 JUDGE STEINBERG: Sure. We will go off the record
23 and you can take your time, get everybody settled.

24 MR. HILL: Five minutes.

25 JUDGE STEINBERG: It's almost time for our first

1 break anyway.

2 (Laughter)

3 (Whereupon, a short recess was taken.)

4 JUDGE STEINBERG: Okay. We are on the record.

5 While we were off the record, we had a discussion. The
6 direct case that Mr. Hill handed out, the Alee direct case
7 has as sort of a preface a page called "Definitions". And
8 it starts off, "References in the written testimony to the
9 Algreg proceeding, and it gives all the relevant citations
10 to the Algreg proceeding, and for the reporter, that's
11 A-L-G-R-E-G.

12 And so we decided to make that page a stipulation,
13 and it will be identified as Stipulation 1, and it's one-
14 page long, and is there any objection to the stipulation?

15 MS. LANCASTER: No, sir.

16 MR. EVANS: No objection.

17 JUDGE STEINBERG: Okay, then the stipulation is, I
18 guess, accepted.

19 MR. HILL: Your Honor, I will make available to
20 the court reporter copies of this.

21 JUDGE STEINBERG: Yes, I think that would be good.
22 That should be part of the record.

23 The stipulation basically is a whole bunch of
24 citations. And if there are any inaccuracies in the
25 citations, I haven't checked them, you know, we can correct

1 that at the appropriate time, which is some time in the
2 future.

3 Okay, are you ready now?

4 MR. HILL: I am ready.

5 JUDGE STEINBERG: Okay.

6 MR. HILL: Mr. Malanga has been called and is at
7 the stand. I don't know whether he has been sworn or not.

8 JUDGE STEINBERG: No, you haven't. Could you
9 please raise your right hand?

10 Whereupon,

11 GEORGE G. MALANGA

12 having been duly sworn, was called as a witness
13 and was examined and testified as follows:

14 JUDGE STEINBERG: Please be seated.

15 THE WITNESS: Thank you.

16 DIRECT EXAMINATION

17 BY MR. HILL:

18 Q Could you please state your name for the record?

19 A Yes. My name is George, middle initial G,
20 Malanga, last name.

21 JUDGE STEINBERG: Why don't you spell it?

22 THE WITNESS: That's M-A-L-A-N-G-A.

23 BY MR. HILL:

24 Q Mr. Malanga, do you have in front of you what has
25 been previously identified as Alee Exhibit No. 4?

1 A Yes.

2 MR. HILL: Your Honor, I have to sit.

3 JUDGE STEINBERG: Okay, no, please do. We haven't
4 gotten anything identified yet really, **so** you have to
5 identify it first.

6 MR. HILL: Yes, I would ask that the written
7 direct testimony that was exchanged at the exchange date as
8 directed by the Judge be identified as Alee Exhibit No. 4,
9 the written direct testimony of George G. Malanga.

10 JUDGE STEINBERG: Okay, it's a four-page document,
11 and it will be marked as Alee Exhibit No. 4.

12 (The document referred to was
13 marked for identification as
14 Alee Exhibit No. 4.)

15 BY MR. HILL:

16 Q Mr. Malanga, do you have what's been identified as
17 Alee Exhibit No. 4 in front of you?

18 A Yes, I do.

19 Q Was that prepared under your supervision?

20 A Yes.

21 Q Are there any corrections to that Alee Exhibit 4?

22 A The only slight correction would be on page 1,
23 line No. 7.

24 Q What is the correction you are going to make?

25 A I have there that I had been a high school teacher

1 in New Jersey for the last 25 years. I have taught for 25
2 years but not consecutively. There was a six-year hiatus
3 where I left teaching and went into business, and then went
4 back.

5 Q With that correction, is Alee Exhibit No. 4 true
6 and correct to the best of your knowledge?

7 A Yes.

8 MR. HILL: Your Honor, I move the introduction of
9 Alee Exhibit No. 4.

10 JUDGE STEINBERG: Any objection?

11 MS. LANCASTER: Yes, sir. I would ask that I have
12 an opportunity to voir dire the witness --

13 JUDGE STEINBERG: Sure.

14 MS. LANCASTER: -- regarding this statement.

15 VOIR DIRE EXAMINATION

16 BY MS. LANCASTER:

17 Q Mr. Malanga, I wanted to put an "R" in there, Mr.
18 Malanga, one second, please.

19 On page 4 of your statement -- first of all, did
20 you sign your statement?

21 A I signed one that I sent back. I remember I did
22 that, yes.

23 MS. LANCASTER: Your Honor, the copies that were
24 served on the Bureau, none of the copies of any of the
25 statements submitted by Alee were signed.

1 MR. HILL: Your Honor, may I address that?

2 JUDGE STEINBERG: Yes.

3 MR. HILL: My hope was that some of them might not
4 be called for cross-examination, and we would have a
5 declaration that would be introduced at this point in time.
6 Upon identifying the witnesses for cross-examination, I
7 assume a declaration is no longer necessary since the
8 witness has been sworn in, and he is personally --

9 JUDGE STEINBERG: Well, he said it's all true and
10 correct.

11 MS. LANCASTER: I just wanted to point that out
12 that nothing that we received was signed.

13 MR. HILL: That is correct.

14 BY MS. LANCASTER:

15 Q You have been a partner in Alee since its
16 inception; is that correct?

17 A Yes.

18 Q What is your basis for saying on line 3 of page 4
19 that you have very capable and honest people in Becky Jo
20 Clark, Bob Bernstein and Terry Jones?

21 A Line 4?

22 Q Yes.

23 A Well, I can't find it here, but my basis is --

24 JUDGE STEINBERG: You had better find it.

25 THE WITNESS: Where is it? On line?

1 JUDGE STEINBERG: Page 4.

2 MS. LANCASTER: Page 4.

3 THE WITNESS: Page 4. I'm sorry.

4 MS. LANCASTER: Line 4.

5 JUDGE STEINBERG: Line 3 and 4. Just read it
6 carefully to yourself and try not to be nervous.

7 THE WITNESS: Okay, thank you.

8 (Witness reviews document.)

9 THE WITNESS: Again, your question is what's my
10 basis on --

11 MS. LANCASTER: Right.

12 THE WITNESS: -- their capabilities?

13 BY MS. LANCASTER:

14 Q How do you know they are honest?

15 A Based on our 11-year history, or actually 14-year
16 history of being together. And when it all came about that
17 they were on the executive committee, fortunately my point
18 there is that they are very capable by their backgrounds.
19 One is a CPA, another one is an attorney, and Becky Jo is a
20 financial planner.

21 Q How do you know they are capable?

22 A Based on what's happened since they became on the
23 executive committee.

24 Q Well, if you were to learn that, for example, they
25 were not following Commission rules and you thought they

1 were, would that influence your opinion of their capability?

2 A If they were not following them?

3 Q Yes.

4 A I'm sorry. The question one more time, please?

5 Q If you found out that under their leadership all
6 the Commission rules were not being followed, would that
7 influence that statement?

8 A Yes, it would.

9 Q So your statement is basically based on an
10 impression that you have. You have nothing really to back
11 that up; is that correct?

12 A Not like I followed **up** on things other than what
13 they reported to us as part of the partnership.

14 Q Were you aware of the Algreg decision?

15 A Oh, yes.

16 Q Did you read that decision?

17 A I don't believe I did.

18 Well, no, I shouldn't say that. I think we did
19 get that, but that was a long time ago. I don't really
20 remember a lot of it.

21 Q So were they not honest when the judges found them
22 not to be honest in Algreg, but now they are?

23 A Say that again, please?

24 Q Are you aware that in the Algreg's decision both
25 the Commission and the hearing judge found Mr. Bernstein,

1 Ms. Clark and Mr. Jones not to be credible witnesses? Are
2 you aware of that?

3 A Yes, I am.

4 Q Okay. **So** in the opinion of the Court at that time
5 they were not particularly honest. Are you aware of that?

6 A Yes.

7 Q That doesn't affect your opinion one way or
8 another?

9 A No.

10 Q And you say, "As a partner," on line 6 on page 4,
11 "I know that was never any intention to misrepresent or hold
12 back any information."

13 What do you base that statement on?

14 A I base that on from the very beginning when we --
15 when the partnership was formed none of us knew each other
16 at all, and we relied on Allan Kane and William Franklin as
17 counsel, and we had to believe what they told **us** basically.

18 **So** when I say there, I was never -- there was
19 never any intention to hold back information that would be
20 on our part, the partners themselves.

21 Q On Alee's part?

22 A Right.

23 Q And have you talked individually with each of the
24 partners regarding this matter?

25 A Yes.

1 Q And each of them have told you that they didn't
2 intend to do anything or hold back information?

3 A Right.

4 Q Why didn't Alee report the risk-sharing agreement
5 until 1992, even though it had been in existence since 1998?

6 MR. HILL: I object **to** this line of questioning.

7 JUDGE STEINBERG: That seems to cross over into
8 cross rather than voir dire.

9 MS. LANCASTER: Okay.

10 MR. HILL: And also --

11 JUDGE STEINBERG: No, you can -- also what?

12 MR. HILL: No, my objection is sufficient.

13 JUDGE STEINBERG: I mean, you might ask later.

14 MS. LANCASTER: Okay.

15 JUDGE STEINBERG: And then you get a different
16 objection on grounds that I can sort of anticipate.

17 BY MS. LANCASTER:

18 Q Do you have personal knowledge **of** what all the
19 partners' intentions were?

20 A Well, we had intentions as a partnership, if that
21 answers your question.

22 Q So you are saying -- you are basing your statement
23 on the -- you are saying there was never any intention.

24 Alee never had any intention is what you mean?

25 A Right.

1 Q And I am asking you how you came to know that Alee
2 never had any intention when in fact Alee was found to have
3 intentionally misrepresented fact. So what's the basis for
4 this statement?

5 A It's on the basis that we relied on other people,
6 and we would look at that as gospel. We had nothing else to
7 go by. So it's just not our own people that directly did
8 it. It's others. Although we are responsible, and I
9 understand all that, but there was never any intention on us
10 as partnership partners to do anything like that.

11 Q And you understand that the Algreg decision
12 specifically rebutted and found against the argument that
13 you are now making?

14 A Yes, I do.

15 Q You understand that?

16 A I am aware of that, yes.

17 Q Now, what is the high price you have paid with the
18 New Mexico license that you talk about on line 10?

19 A As far as I know, I know from all the other
20 partnerships that were involved in the risk sharing,
21 apparently they are all done and they have sold their
22 partnerships. I can cite one.

23 My sister was in another partnership. I couldn't
24 tell you the name of their partnership. But the bottom line
25 is I would say we probably -- myself personally in the area

1 of \$2 million I probably lost because of this situation. So
2 that's the high price.

3 Q How have you lost \$2 million?

4 A Well, I think the market value of our cellular
5 site area, like had we sold it. As I understand, all the
6 other ones are sold, and we could not sell ours because of
7 the fact that we still had all this litigation, if we had
8 wanted to sell it.

9 Q As far as you're concerned, have you lost that
10 license in New Mexico?

11 A Yes. Yes, we have, although we are still running
12 it.

13 Q You understand there was a Commission order
14 terminating that license?

15 A Um-hmm.

16 Q You also understand --

17 JUDGE STEINBERG: Okay, you have to answer "yes".

18 THE WITNESS: Yes.

19 BY MS. LANCASTER:

20 Q You also understand that Alee has f led -- as now
21 taken the position that they are entitled to keep the
22 license? Do you understand that?

23 A There is a temporary order that we -- and a stay
24 that we applied for.

25 Q There is a motion for a stay and there is

1 arguments that Alee has made --

2 A Right.

3 Q -- that they now - they don't lose the license;
4 you understand that?

5 A Yes.

6 Q And you agree with those positions?

7 A Yes.

8 JUDGE STEINBERG: This borders on cross.

9 MS. LANCASTER: Your Honor, I --

10 JUDGE STEINBERG: No, no, I know you -- no, I am
11 talking about what I am about to say.

12 MS. LANCASTER: Oh, okay.

13 JUDGE STEINBERG: But while we are here, you said
14 you paid a high price in that you lost, you would guess,
15 about \$2 million as a result of the Algreg decision. Of
16 course, the market value of the New Mexico license declined.

17 Now, other people have sold their cellular systems
18 and you haven't been able to sell your cellular system
19 because of this decrease -- because of the litigation.

20 THE WITNESS: Right.

21 JUDGE STEINBERG: Have I summarized it correct?

22 THE WITNESS: Right. Right.

23 JUDGE STEINBERG: And if I am wrong, you tell me I
24 am wrong. I am not -- you know, other people tell me I am
25 wrong and it doesn't bother me. Well, maybe it does a

1 little bit

2 But if it wasn't for the litigation, Alee would
3 have gotten out **of** this market a long time ago, sold its
4 license?

5 THE WITNESS: That's a hard question to answer.
6 But I would say generally and based on what all the other
7 ones have done, not that we base our decision on those, but
8 I think -- I don't think we ever really got to that point,
9 you know, where we could really even discuss it because --

10 JUDGE STEINBERG: Okay.

11 THE WITNESS: -- it hasn't been the cards at all.

12 JUDGE STEINBERG: Because you have had this
13 ongoing litigation?

14 THE WITNESS: Right.

15 BY MS. LANCASTER:

16 Q You haven't tried to sell, have **you**?

17 A No. No.

18 JUDGE STEINBERG: Okay. Just was being curious.

19 MS. LANCASTER: Your Honor, I would move to strike
20 page 3, all the response to the question cited on line 15 of
21 page 3, in that I don't believe Mr. Malanga can speak for
22 all of the partners. I don't think he has personal
23 knowledge of what their intentions were and what their
24 feelings are about this. I don't believe -- they have not
25 tried to sell anything, so he certainly can't say --

1 speculate as to how much money he has lost. All of this is
2 speculative and self-serving.

3 It's also the exact same arguments that were made
4 in both of the Algreg proceedings, and consequently in my
5 view it borders on re-litigating those proceedings which we
6 are not supposed to do in this hearing. It has basically no
7 probative value.

8 MR. HILL: May I respond?

9 JUDGE STEINBERG: Yes.

10 MR. HILL: While there are multiple objections, I
11 will try to remember them all. I think, as to the
12 competency of the witness to testify concerning his
13 perceptions of the partnership, what its intentions were, I
14 think he is competent to do it. Ms. Lancaster brought out
15 her voir dire the basis for his statement. We can argue
16 what that is worth or not worth in proposed findings.

17 It's not a re-litigation of the Algreg issues. We
18 are trying to set the stage here for what the partners --
19 what the situation was in 1988-89, when the operative facts
20 that set the stage for the lack of candor, what's happened
21 since then.

22 It's been recognition, acknowledge of what the
23 lack of candor meant or means to this partnership. And I
24 think to that extent it is relevant to the rehabilitation
25 part of the issues.

1 MR. EVANS: Well, I actually had a similar
2 objection to Ms. Lancaster, though a little bit more narrow.
3 I would object to the line that begins with -- the sentence
4 that begins on line 21 of page 3 and goes over to line 2 of
5 page 4, and then the sentence that begins on line 6, "As a
6 partner..."

7 To me, I thought both of those sentences
8 specifically attempted to re-litigate a matter that was
9 decided in the original Algleg case. It's an attempt to
10 explicate Alee from what the Commission specifically found
11 that they did wrong, and I think that violates the terms of
12 the designation order.

13 Personally, I thought that some **of** the other
14 language in response to a question there was, if maybe
15 irrelevant, a question of relevance, but not objectionable.
16 In other words, the fact that the revocation was a shock and
17 a major disappointment, I mean, who cares, but it's not
18 really -- it's not really objectionable.

19 MR. HILL: Well, it's not a re-litigation. Those
20 findings are final and binding on Alee. We are not trying
21 to say we want a rehearing or reopen the record here. We're
22 trying to set the stage for what the partnership through its
23 partners thought, what they were thinking to the best we can
24 describe that here **14** years later, in **1988-89**, and we put
25 all the testimony together, and you will see they are making

1 presentations that things have changed, and things are being
2 done differently.

3 I think it is an appropriate background recitation
4 that helps set the stage for our rehabilitation argument.

5 JUDGE STEINBERG: Okay.

6 MR. EVANS: I think it's appropriate for them to
7 put in the rehabilitation parts of the paragraph there. But
8 when they say, "I know there was never any intention to
9 misrepresent," that specifically goes to what the Commission
10 found previously.

11 JUDGE STEINBERG: Well, let me rule. I am going
12 to partially overrule the objections and partially sustain
13 them, and you can figure out which is which.

14 MS. LANCASTER: May I may one other statement,
15 Your Honor?

16 JUDGE STEINBERG: Yes.

17 MS. LANCASTER: I am not objecting if Mr. Malanga
18 wants to say he was shocked, or these were his feelings.
19 That's one thing. But when he --

20 JUDGE STEINBERG: Okay, well, that's --

21 MS. LANCASTER: -- starts trying to speak for all
22 the partners, that's where I --

23 JUDGE STEINBERG: That's where the ruling is going
24 to go.

25 MS. LANCASTER: Okay.